

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

IN RE: BLUE CROSS BLUE SHIELD ANTITRUST LITIGATION (MDL No. 2406) <hr style="width: 40%; margin-left: 0;"/>)))))	Master File No. 2:13-cv-20000-RDP
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**MEMORANDUM IN SUPPORT OF NOMINATIONS TO COMMITTEE POSITIONS IN
LEADERSHIP STRUCTURE**

Plaintiffs Fred R. Richards, Richards and Sons Construction Company, Inc., American Electric Motor Services, Inc., Thomas A. Carder, Jr. and Industrial Sales & Service, LLC (“Plaintiffs”) respectfully submit this memorandum in support of their nominations for committee positions in the leadership structure.¹ In light of the committee structure set forth in the Court’s February 28, 2013 Order Appointing Plaintiffs’ Liaison Counsel and Inviting Applications for Plaintiffs’ Leadership Committee Positions, Plaintiffs respectfully suggest the following organization of counsel, and provide background information on the nominated attorneys.

I. NOMINATIONS

PSC (subscriber members): Joe Goldberg

Local Facilitating Lawyer: John Saxon

Class Action Discovery

Member: Eric Cramer

Discovery

Chair: Dan Gustafson

¹ Cohen Milstein Sellers & Toll PLLC has previously submitted an application for lead counsel in this litigation. This memorandum addresses only the positions on the subsidiary leadership committees, and is not intended to alter or amend that prior motion in any way.

Experts

Chair: Joe Goldberg

Member: Eric Cramer

Damages

Chair: Joe Goldberg

Member: Eric Cramer

Written Submissions

Chair: Eric Cramer

Litigation: Joe Goldberg

Because experts are so integrally involved in damages issues, we recommend that the same lawyers staff both the Experts and Damages Committees. In addition, Plaintiffs have only nominated individuals to fill some of the committee positions suggested by the Court. Plaintiffs have nominated those individuals that they feel strongly would be an asset to the class as committee members, while retaining flexibility for the Court to supplement these nominations with others as it sees fit.

II. BACKGROUND ON NOMINATED ATTORNEYS

Eric Cramer, whom we nominate for membership on the Class Action Discovery, Experts, and Damages Committees, is a shareholder at Berger & Montague, P.C. Berger & Montague is currently acting in lead or co-lead capacity in multiple major class actions, including *In re Payment Card & Merchant Discount Litigation* and *Ross v. Bank of America*. Eric L. Cramer is a managing shareholder at the firm, where he has practiced since 1995. Berger & Montague has pioneered the use of class actions in antitrust litigation, and over the last forty years has successfully litigated many significant antitrust cases, including *Bogosian v. Gulf Oil Corp.*, *In re Corrugated Container Antitrust Litigation*, *In re Currency Conversion Fee Antitrust Litigation*, and *In re Infant Formula Antitrust Litigation*. Berger & Montague has routinely been

selected by federal courts to act as lead or co-lead counsel in complex antitrust cases.

Mr. Cramer has repeatedly been selected by Chambers USA *America's Leading Lawyers for Business* as one of Pennsylvania's top antitrust lawyers; has been highlighted in 2011 and 2012 by *The Legal 500* as one of the country's top lawyers in the field of complex antitrust litigation; and has repeatedly been deemed a "Super Lawyer" by Philadelphia Magazine. Mr. Cramer has been substantially involved in trying antitrust class actions, and is responsible for winning substantial settlements for his clients and class members in multiple cases totaling well over \$1 billion. He has been lead or co-lead counsel in dozens of antitrust class actions during his career.

Mr. Cramer is also a frequent speaker at antitrust conferences and has written widely in the fields of class certification and antitrust law. Among other writings, Mr. Cramer has co-authored *Antitrust, Class Certification, and the Politics of Procedure*, 17 George Mason Law Review 4 (2010) (<http://ssrn.com/abstract=1578459>), which the Third Circuit recently cited in *Behrend v. Comcast Corp.*, 655 F.3d 182, 200, n.10 (3d Cir. 2011). He has also co-written a number of other pieces, including: *Of Vulnerable Monopolists?: Questionable Innovation in the Standard for Class Certification in Antitrust Cases*, 41 Rutgers Law Journal 355 (2009-2010) (<http://ssrn.com/abstract=1542143>); *A Questionable New Standard for Class Certification in Antitrust Cases*, published in the ABA's Antitrust Magazine, Vol. 26, No. 1 (Fall 2011); a Chapter of *American Antitrust Institute's Private International Enforcement Handbook* (2010), entitled "Who May Pursue a Private Claim?"; and, a chapter of the American Bar Association's *Pharmaceutical Industry Handbook* (July 2009), entitled "Assessing Market Power in the Prescription Pharmaceutical Industry." He is a *summa cum laude* graduate of Princeton University (1989), where he was elected to Phi Beta Kappa. He graduated *cum laude* from Harvard Law School with a J.D. in 1993. He is a member of the Board of Directors of the American Antitrust Institute and the current President of COSAL (Committee to Support the Antitrust Laws).

Joe Goldberg, whom we nominate to chair the Experts and Damages Committees and for

membership on the Litigation Committee, is a senior shareholder at Freedman Boyd Hollander Goldberg Urias & Ward P.A. Freedman Boyd is a litigation firm handling a broad spectrum of civil and criminal cases. Joe Goldberg, a senior shareholder in the firm since 1991, practices largely in the areas of antitrust, class actions and complex commercial litigation. He has tried a number of cases to multimillion-dollar verdicts, and recovered over two billion dollars for his clients. Most recently, in February of this year, Mr. Goldberg was the lead trial lawyer in *In re Urethane Antitrust Litigation*, where the jury returned a \$400 million, single damages verdict after a five-week trial. He has an “AV” rating in Martindale-Hubbell, is listed in Best Lawyers in America in antitrust, commercial litigation, and bet-the-company litigation, and has been listed in Chambers USA since its inception. Mr. Goldberg was designated by Best Lawyers in America as “bet-the company” litigator of the year in New Mexico in 2009 and antitrust litigator of the year in 2011. He is widely recognized for his work with economic and statistical experts.

Dan Gustafson whom we nominate to chair the Discovery Committee is a founding partner of Gustafson Gluek PLLC. Gustafson Gluek has been practicing in the areas of complex litigation and class actions since its inception in 2003. Much of the firm’s practice is devoted to the prosecution of antitrust violations and the firm has been appointed lead counsel or a member of the Executive Committee in several significant antitrust matters such as: *The Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, *In re Dynamic Access Memory (DRAM) Antitrust Litigation*, *In re Vitamin C Antitrust Litigation*, *In re National Arbitration Forum Litigation*, *In re Comcast Corp, Set-Top Cable Television Box Antitrust Litigation*, *In re MSG Antitrust Litigation*, and *Precision Assocs., Inc. v. Panalpina World Transport*. In addition, Mr. Gustafson has served as lead counsel in *In re Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation*, and as settlement counsel in *Dryer et al. v. National Football League*. Mr. Gustafson was recently selected as one of Minnesota Lawyer’s Attorneys of the Year for 2010 and is regularly listed by Law & Politics magazine as a Minnesota “Super Lawyer” in the fields of class actions and antitrust.

Finally, John Saxon, whom we nominate as the Local Facilitating Lawyer, is a private

practitioner with deep roots in the Alabama and national legal communities. Mr. Saxon opened his own practice in 1995, after practicing for eight years with other Birmingham firms and spending ten years in Washington, D.C., where he held a number of governmental positions in both Congress and the Executive Branch. He has extensive civil litigation experience in the Alabama federal courts, including in the prosecution of class actions. He has regularly litigated against insurance companies. A sample of such cases include: *Coe v. State Farm Mutual Automobile Ins. Co., et al.*, CV-91-006255 (Ala. Cir. Ct., Jefferson Cnty.); *White v. The Northwestern Mutual Life Insurance Co.*, CV-94-572 (Ala. Cir. Ct., Calhoun Cnty.); *Hubbert v. Mutual of Omaha Companies*, CV-97-P-2962-J (N.D. Ala.); *Cameron v. UNUM Life Insurance Company of America*, CV-02-BE-1273-S (N.D. Ala.); *Heron v. UNUM Provident, Inc.*, CV-08-02267-IPJ (N.D. Ala.); and, specifically against one of the defendants herein, *Express Care, Inc. v. Blue Cross Blue Shield of Alabama*, CV-99-N-1740-S (N.D. Ala.). He has experience in multi-plaintiff cases before this court: *Crutcher, et al. v. Chugach Management Systems*, CV-03-00731-RDP (N.D. Ala.), a forty-seven plaintiff race discrimination and retaliation case. Mr. Saxon has been listed in Alabama SuperLawyers every year since 2008, and for the last two years it has listed him in the Top 50 Lawyers in the State. He is listed in the Best Lawyers in America 2009-2013, has been an AV-rated attorney by Martindale-Hubbell for fifteen years, and is in the Martindale-Hubbell Bar Register of Preeminent Lawyers. Mr. Saxon received his J.D. degree from the University of Alabama, his M.A. from the University of North Carolina at Chapel Hill, and is a graduate of the Stanford Executive Program of the Stanford University Graduate School of Business. He is a Fellow of the American College of Trial Lawyers, and in 2011 served as the first Chair of the Federal Practice Section of the Birmingham Bar Association.

III. CONCLUSION

Plaintiffs are committed to the zealous litigation of the putative class's claims and bring a wealth of experience, expertise, and resources that will greatly benefit the putative class. All of

the nominated lawyers from our group will work cooperatively and with any other lawyers the Court deems appropriate to chair or serve on any of these committees.

Dated: April 5, 2013

Respectfully submitted,

/s/ John D. Saxon

John D. Saxon

ASB-3258-O71J

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